

(2011) 12 JH CK 0106
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1572 of 2010

Rabishwar Basak

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-12-2011

Acts Referred:

Citation : (2011) 12 JH CK 0106

Hon'ble Judges : D. N. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D. N. Patel

1. Leave to amend the serial numbers of the respondents is allowed. Let the necessary amendment be incorporated in red ink.
2. The present writ petition has been preferred by the petitioner mainly on the ground that the petitioner has been compelled to retire at the age of 58 years from the services of the respondents whereas the correct date of retirement is 31st March, 2012 because the age of retirement is 60 years.
3. Counsel for the petitioner submitted that petitioner is an Accounts Clerk. His date of birth is 15th March, 1952. The parent department of the petitioner is Bihar State Food & Civil Supplies Corporation Limited, Patna. Petitioner is on deputation with the respondent Nos.1 to 4. It is submitted by the counsel for the petitioner that at the parent department initially the age of retirement was 58 years, but the same has been enhanced upto 60 years w.e.f. 29th July, 2006 (annexure 7). Moreover, in the State of Jharkhand, the age of retirement for similarly situated candidates/employees is 60 years, but the petitioner has been compelled to retire w.e.f. 31st March, 2010 at the age of 58 years. In fact, at the parent department of the petitioner, age of retirement is 60 years and, therefore, the petitioner ought to have been continued in the services upto 60 years and his correct date of retirement is 31st March, 2012 and, therefore, let the petition be

allowed and the salary for the intervening period of the petitioner be paid to him and let the petitioner be allowed to resume his duties. It is further submitted by counsel for the petitioner that by mandatory interim order dated 14th September, 2011, petitioner is already permitted to resume his duties and he is in the service, therefore, let the petition be allowed and the necessary monetary benefits and such other benefits by way of continuation of services from 31st March, 2010 may be extended to the petitioner within the stipulated time granted by this Court.

4. Counsel for the respondents-State of Jharkhand submitted that petitioner is on deputation with the respondent Nos.1 to 4 and, therefore, those who are on deputation, their services are brought to an end by the respondents-State authorities at the age of 58 years. Petitioner's date of birth is 15th March, 1952, therefore, he retires on 31st March, 2010. It is also submitted by the State that in the parent department, the age of retirement is 58 years and, therefore also, he was rightly retired by the State of Jharkhand on 31st March, 2010, therefore, the petition deserves to be dismissed.

5. Counsel for the respondent Nos.5 & 6 submitted that respondent Nos.5 & 6 are the parent department of the petitioner where the petitioner was appointed as an Accounts Clerk and initially age of retirement of the petitioner was 58 years, but thereafter it has been enhanced upto 60 years vide annexure 7 dated 29th July, 2006. Therefore, petitioner should have been continued in service upto 60 years and, therefore, retirement date of the petitioner will be 31st March, 2012 looking to the date of birth of the petitioner as 15th March, 1952.

6. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, it appears that the petitioner was appointed as an Accounts Clerk with the Bihar State Food & Civil Supplies Corporation Limited at Patna. Thereafter the petitioner was on deputation with the respondents Nos.1 to 4. The date of birth of the petitioner is 15th March, 1952. It appears from the records that in the parent department i.e. Bihar State Food & Civil Supplies Corporation Limited, Patna, the age of retirement has been enhanced from 58 years to 60 years vide annexure 7 to the memo of the petition. This is an admitted fact as per the counsels of both sides. Now the only question left out is whether the employee who is on deputation, can retire earlier who is on deputation with the State of Jharkhand. The obvious answer is in negative. In the parent department, the age of retirement is 60 years, and therefore, the petitioner could not have been retired at the age of 58 years. Moreover, in the State of Jharkhand, age of retirement is 60 years. The petitioner was unnecessarily compelled to retire on 31st March, 2010. Looking to the date of birth he ought to have been retired on 31st March, 2012. Thus, instead of 14th March, 2012, the date of retirement will be 31st March, 2012.

7. It further appears from the order of this Court dated 14th September, 2011 in this writ petition that by interim order the petitioner was permitted to resume his duties and in fact the petitioner has resumed his duties with the respondent

Nos.1 to 4 on 20th September, 2011 and the petitioner is getting his current salary.

8. Petitioner has admittedly relied upon a decision rendered by the Hon'ble Supreme Court in the case of Registrar T.N.V.A.S. University Vs . Shyed Abdul Quayam and Others which reads as under:

1. The respondent was appointed as the First Registrar of the Tamil Nadu Veterinary and Animal Sciences University. The appointment purports to have been made u/s 47 of the University Act. Section 47, inter alia, provides that notwithstanding anything contained in Section 13(1) the first Registrar shall be appointed by the Government for a period not exceeding three years and on such other conditions as they think fit. The section also states that the person appointed as the First Registrar shall retire from office if, during the term of his office, he completes fiftyeight.

2. Prior to the respondent's appointment as the First Registrar, he was in teaching staff of the same University. The age of the retirement of the teaching staff of the University is 60 years. The University, however, retired him from the office of the Registrar upon his attaining 58. The High Court has declared that the respondent has a right to continue in the teaching staff till he attains 60.

3. In our view, the view taken by the High Court appears to be justified. The appointment of the respondent as the First Registrar was for a term of three years. After the period of three years, or on attaining 58 years, he has no right to continue as Registrar, but he cannot be retired from service of the University. He is entitled to go back to his teaching profession in the University. We agree with the view taken by the High Court and dismiss the appeal with costs.

9. In view of this decision also, the petitioner ought to have been continued in the service upto 31st March, 2012.

10. As a cumulative effect and looking to the aforesaid facts, reasons and judicial pronouncement, I, hereby, quash and set aside the order passed by respondent No.4 - Treasury Officer, Giridih dated 30th March, 2010 as the petitioner was wrongly retired by the respondents on 31st March, 2010. He is also entitled to continue in the service upto 31st March, 2012 and though the petitioner was ready and willing to continue in the service and he was unauthorizedly not allowed to work, he is also entitled to monetary and consequential benefits. He is also entitled to all benefits including the monetary benefits. Petitioner will be entitled to the salary on or from 1st April, 2010 onwards. As the petitioner has already resumed his duties on 20th September, 2011 and he is getting his salary regularly, dearness allowance and such other allowances legally payable to the petitioner, the legally payable amount for the intervening period on or from 1st April, 2010. This amount will be calculated and monetary benefits will be paid to the petitioner within four weeks from the date of receipt/production of a copy of this order.

11. With the aforesaid directions, this writ petition is allowed and disposed of.